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10  
11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE SOUTHERN DISTRICT OF CALIFORNIA  
13

14 **KEVIN GUNN,**

Petitioner,

15  
16 v.

17 **J. F. SALAZAR, WARDEN,**

Respondent.

Civil No. 08-0972 LAB (WMc)

**RESPONDENT'S MOTION FOR  
ENLARGEMENT OF TIME AND  
DECLARATION OF JAMES D.  
DUTTON IN SUPPORT THEREOF**

The Hon. William McCurine, Jr.

19  
20 COMES NOW RESPONDENT, J. F. SALAZAR, Warden, by counsel, pursuant to Rule  
21 6(b) of the Federal Rules of Civil Procedure, and requests this Court to order an enlargement of time  
22 of thirty (30) days, until **September 10, 2008**, to file and serve a Motion to Dismiss, and until  
23 **September 25, 2008**, to file an Answer to Petitioner KEVIN GUNN'S First Amended Petition for  
24 Writ of Habeas Corpus as ordered by this Court on June 26, 2008, order being filed on June 30,  
25 2008.

26 Pursuant to this Court's Order, Respondent's Motion to Dismiss is due no later than  
27 **August 11, 2008**, and Answer is due no later than **August 26, 2008**. Additional time is needed for  
28 the reasons set forth in the accompanying declaration.

08-0972 LAB (WMc)

**CONCLUSION**

Accordingly, Respondent respectfully requests this Court to grant the enlargement of time sought.

Dated: August 7, 2008

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General of the State of California

DANE R. GILLETTE  
Chief Assistant Attorney General

GARY W. SCHONS  
Senior Assistant Attorney General

/s/ James D. Dutton  
JAMES D. DUTTON  
Supervising Deputy Attorney General  
Attorneys for Respondent

JDD:llc

SD2008801742

**DECLARATION OF JAMES D. DUTTON**

James D. Dutton hereby declares under penalty of perjury as follows:

I am a Supervising Deputy Attorney General for the State of California and am a member of the bar of the United States District Court for the Southern California. I have been assigned as counsel for Respondent, **J. F. SALAZAR**, Warden, to prepare all necessary pleadings in the case of , **KEVIN GUNN v. J. F. SALAZAR**, *Warden*, In case number, 08-0972 LAB (WMc).

On July 9, 2008, after receipt of the Court's order, Respondent's office requested our two court of appeal files in this matter, copies of pertinent state records, and habeas corpus petitions. As of August 4, 2008, the California Supreme Court habeas corpus petitions and orders, as well as our two appellate files had not arrived at the San Diego Office. Additional inquiries were transmitted on August 4, 2008, and the California Supreme Court petitions and orders arrived at our San Diego Office on August 6, 2008. Our two appellate files were located on August 7, 2008. On August 6, 2008, the San Diego Office also obtained two other pertinent documents from the San Diego superior court, case number SCD144476, Petitioner's October 12, 2005, Motion for Reduction of Restitution, and the October 25, 2005, Order Denying Petitioner's Motion. Respondent's Brief as to the trial level issue's, in case number DO35782, is dated July 2, 2001. Our older appellate files are kept in storage off-site and it appears that there was some difficulty retrieving them in this case.

I have reviewed each page of the Amended Petition and its attachments, and am familiar with Petitioner's seven grounds of complaint.

In the last 30 days, I have filed a respondent's briefs in *People v Vargas*, case number G036899, a case which has a 2,500 page record and includes two transcripts of two trials, and in

*People v. Bailey*, case number D051913. I have prepared, but not yet filed, a respondent's briefs in *People v. Piedra*, case number G039288, and *People v. Washington*, case number, D052152. In the last 30 days, I have completed a statutory mandated 40 hour, on-line, supervisor training program.

Further, I have reviewed several investigations, pleadings, pending trial matters as the supervisor of the San Diego Office trial team and worked on my current trial and pending investigative matters, which has included trial appearances. Lastly, as Chief of the Attorney General's Money Laundering Unit, I have responded to several inquiries as to money laundering and financial investigations from outside agencies.

I continue to carry an appellate case load, and criminal trial and investigative matters.

Consequently, an additional thirty days (30) days, up to and including **September 10, 2008**, to file and serve a Motion to Dismiss, and until **September 25, 2008**, to file and serve an Answer will allow declarant to review any relevant state court pleadings, multiple habeas corpus petitions, transcripts and orders necessary to prepare an appropriate response to the instant Amended Petition as ordered by this Court on June 26, 2008, as well as to complete any current assignments.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of August 2008, at San Diego, California.

/s/ James D. Dutton

JAMES D. DUTTON  
Supervising Deputy Attorney General

JDD:llc  
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80269481.wpd

**CERTIFICATE OF SERVICE BY U.S. MAIL**

Case Name: ***Gunn v. Salazar***

Case No.: **08-0972 LAB (WMC)**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On August 7, 2008, I served the following documents: **RESPONDENT'S MOTION FOR ENLARGEMENT OF TIME AND DECLARATION OF JAMES D. DUTTON IN SUPPORT THEREOF**; AND ORDER by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Kevin O. Gunn  
P-78894  
Chuckawalla Valley State Prison  
P.O. Box 2289  
Blythe, CA 92226  
Pro-Per

**Manual Notice List**

The following are those who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing):

Kevin O. Gunn P-78894  
Chuckawalla Valley State Prison  
P.O. Box 2289  
Blythe, CA 92226  
Pro-Per

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 7, 2008, at San Diego, California.

\_\_\_\_\_  
Linda Chavez  
Declarant

\_\_\_\_\_  
Signature

